

**JEFFRIES  
DECLARATION  
EXHIBIT**

**4**

Page 1

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4

5 KALOMA CARDWELL, )  
6 Plaintiff, )  
7 vs. ) 19 Civ. 10256  
8 ) (GHW)  
9 DAVIS POLK & WARDWELL, )  
10 THOMAS REID, JOHN BICK, )  
11 WILLIAM CHUDD, SOPHIA )  
12 HUDSON, HAROLD )  
13 BIRNBAUM, DANIEL BRASS, )  
14 BRIAN WOLFE, and JOHN )  
15 BUTLER, )  
16 Defendants. )  
17 ----- )

18 REMOTE DEPOSITION OF  
19 JOHN BICK  
20 located in Quogue, New York  
21 Tuesday, April 13, 2021

22 Reported By:  
23 CATHI IRISH, RPR, CRR, CLVS  
24  
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Page 2

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7  
8 April 13, 2021  
9 9:30 a.m.  
10

11 Remote deposition of JOHN BICK,  
12 with all participants appearing via  
13 videoconference, before Cathi Irish, a  
14 Registered Professional Reporter,  
15 Certified Realtime Reporter, and  
16 Notary Public of the State of  
17 New York.  
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1 today's testimony?

2 A. I have no recollection of  
3 reviewing that complaint.

4 Q. Are you aware of Mr. Cardwell's  
5 complaints with the EEOC, Equal Employment  
6 Opportunity Commission?

7 A. Yes.

8 Q. Did you review those complaints  
9 prior to your testimony today?

10 A. Yes.

11 Q. Did you yourself participate in  
12 the gathering of any documents related to  
13 this litigation prior to today?

14 A. Counsel came to see me and asked  
15 for any documents that I had so that was  
16 the extent of my participation.

17 Q. The documents -- with respect to  
18 that inquiry, did you, in fact, provide  
19 documents to counsel?

20 A. I had no hard copy to deliver to  
21 counsel. All of my documents were e-mails  
22 and digital that they could look at  
23 through the systems.

24 Q. And did you provide those  
25

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1 documents to counsel prior to today?

2 A. Again, I didn't provide them  
3 anything. They looked on the computer for  
4 e-mails and such. I did not provide them  
5 any hard copy.

6 Q. Are you aware of whether or not  
7 the items that you allowed counsel to  
8 review that you just mentioned were in any  
9 way supplied to counsel?

10 A. I don't understand the question.

11 Q. Did counsel take possession of  
12 the items that you indicated were reviewed  
13 in a digital format?

14 A. I do not know because I was not  
15 part of the e-mail reviews digitally.

16 Q. So you yourself did not  
17 affirmatively provide counsel with any  
18 digital copies or ensure the forwarding of  
19 any of the digital information to counsel  
20 that you mentioned was reviewed; is that  
21 correct?

22 A. Not to my recollection.

23 Q. And what type of documents are we  
24 talking about? You mentioned e-mails?  
25

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Q. And the Career Advisors Listserv uses the e-mail address cap.advisors.ny@davispolk.com; is that correct?

A. I do not know.

Q. Do you have any reason to dispute that the e-mail address I just read to you is the Career Advisors Listserv e-mail address?

A. No.

Q. Was your work e-mail address also a part of the NYMA Partners Listserv?

A. I do not know.

Q. Are you familiar with whether or not there is an NYMA Partners Listserv?

A. I do not know the specific names of the Listservers. If you're referring to a Listserv for M&A partners in New York, there is one and I'm part of that.

Q. Are you familiar with whether or not the e-mail address for the Listserv that you mentioned that you're a part of is nyma.partners@davispolk.com?

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A. I do not know.

Q. Do you have any reason to dispute that is the e-mail address?

A. I do not.

Q. You previously served as the head of Davis Polk's corporate department, global head of the mergers and acquisitions practice, and a member of the firm's three-person management committee; is that correct?

A. Yes.

Q. I want to go through each of these positions.

With respect to your position as the head of the corporate department, when did you first start serving in that role?

A. 2011.

Q. How did it come to pass that you were selected to be in that position?

A. I was elected by the firm and I chose to run.

Q. When did you stop serving in that role?

A. 2019.

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position, that was from 2011 through -- did you say 2018; is that correct?

A. 2019 when I stepped off of the management committee. That position, if you will, is part of the management committee. I get elected to that position by the firm and serve on the management committee as such.

Q. When did you first -- withdrawn.

Can you describe how you attained the position of M&A practice group head?

A. Sure. David Kaplan was the head of the M&A group and he announced unexpectedly that he was leaving the firm to join a client. This was early 2016 and so we needed to have a replacement to head up the M&A group. Tom Reid and I discussed this. We didn't have an immediate choice to replace him among the M&A partners, so it was decided that I would take up that position on an interim basis until we decided collectively who the longer-term replacement for David should be.

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Q. So you mentioned -- when did you stop serving in that role? You mentioned 2017. Do you remember when in 2017 it was?

A. It was roughly a year later so I believe I stepped down and we put in my replacement in about May of 2017.

Q. Was your departure from the position of M&A practice group head related in any way to any formal investigation that occurred at Davis Polk?

A. No.

Q. Was your departure from the position related in any way to any informal investigation that occurred at Davis Polk?

A. No.

Q. Did any individual or group of individuals ask you to step down from that position?

A. No.

Q. Did any individual or group of individuals recommend that you step down from that position?

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your understanding of the policy that was in place between 2014 and 2018?

A. You cannot discriminate based on gender, race, ethnic background, religion, other protected statuses.

Q. Do you know when that policy was created?

A. A long time ago. I don't remember the precise date it was first put in place.

Q. Do you know how it was created?

A. I do not.

Q. Did you play any role in the creation of the policy?

A. Not to my knowledge, no.

Q. From the date of 2018 onwards, are you aware of whether or not that policy has been revised?

A. I do not remember.

Q. Is it possible that it's been revised?

MR. BIRENBOIM: Calls for speculation.

THE WITNESS: I do not know.

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BY MR. JEFFRIES:

Q. If the policy were indeed revised, would you have had input in any revisions of the antidiscrimination policy?

A. If it were a material change, I believe it would have been run by the management committee during my tenure.

Q. How did you become aware -- as a partner, how did you become aware of the antidiscrimination policy at Davis Polk?

A. Well, just as a lawyer, we have regular training sessions and all lawyers and personnel are made aware of the various policies we have in a place. In addition, each year we circulate all policies of the firm, all material policies and the lawyers are asked to confirm that they've read, reviewed and will comply with those policies.

Q. So that circulation, along with the reading, review and attestation that they are going to comply with the policies, that is relative to associates

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that said you cannot retaliate.

Q. So it's your testimony that Davis Polk had a strong, and did you say clear anti-retaliation policy from 2014 through 2018?

A. I believe so, yes.

Q. And according to the policy, what does it mean to -- what does retaliation mean according to the policy?

A. Well, to give an example, again going back to sexual harassment, if the lawyer or any employee brings a claim that they have been sexually harassed by someone at the firm, and if we talk to the person who is accused, we are certain, I believe, to tell that person that they cannot retaliate in any way, shape or form with the person making the accusation.

Q. And how did partners, associates and counsel become aware of Davis Polk's anti-retaliation policy?

A. It would be part of the regular training I talked about, people would mention that, and it's part of the

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policies that are circulated to lawyers.

Q. Did Davis Polk have any retaliation policies that prohibited any form of retaliation against any individual who raises any questions concerning legal compliance or professional ethics in good faith?

A. On that specific, I don't know what the policy says on legal compliance, but as a practical matter, I believe the answer would be the same. For example, if someone brought a complaint that there was inappropriate trading of on inside information and we were investigating that, certainly there would be no retaliation against the accuser.

Q. Did Davis Polk have a strong and clear anti-harassment policy from 2014 to 2018?

A. Yes.

Q. How did associates, partners, counsel become aware of Davis Polk's anti-harassment policy?

A. On the same basis I described for

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the other policies.

Q. How would you describe the antiharassment policy?

A. You may not harass, sexually or otherwise, people you are working with.

Q. During Mr. Cardwell's employment, did the firm's policies permit Mr. Cardwell to report any perceived or actual issues related to discrimination, harassment or retaliation to you?

A. He could come and talk to me, yes.

Q. And what, if any, responsibilities are you aware of the firm's anti-harassment, antidiscrimination and anti-retaliation policies create within a partner who receives a report related to any of those issues?

MR. BIRENBOIM: Objection to form. You may answer if you understand.

THE WITNESS: If an associate comes to me as a partner or as alternatively someone on the

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management committee and they report sexual harassment to me, I am obligated as sort of a supervisor to report that to the firm so that could be the general counsel's office as well as Sharon Crane as executive director of HR.

BY MR. JEFFRIES:

Q. So it's safe to say that your role as a partner creates certain reporting obligations with respect to any claim of harassment, discrimination or retaliation that you would have heard; is that right?

A. If it's a material claim and someone comes in and talks about that, yes, I would report it to the firm and I would tell the person who is raising the complaint with me that I had an obligation to report that to the firm.

Q. You used material a couple times throughout the course of your testimony to delineate the nature of allegations that would be subject to the policies we're



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1 discussing. How do you determine whether  
2 an allegation is material or defined?

3 A. An allegation about what, please?

4 Q. How do you determine whether an  
5 allegation is material or immaterial?

6 A. What type of allegation?

7 Q. An allegation with respect to  
8 discrimination.

9 MR. BIRENBOIM: Objection to  
10 form. You may answer.

11 THE WITNESS: If someone came to  
12 me and alleged that they were being  
13 discriminated against, I would myself  
14 generally report that to the firm.

15 BY MR. JEFFRIES:

16 Q. So would you make an internal  
17 calculation about whether or not the claim  
18 is material or not prior to reporting it  
19 or would you simply report the claim --  
20 the allegation rather?

21 A. I'm assuming the allegation is  
22 clear. So sometimes a person comes in and  
23 makes a complaint, it's not clear what  
24 exactly they're complaining about, so  
25

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1 that's where the judgment comes in. But  
2 if it's a clear allegation of  
3 discrimination in any shape or form, then  
4 yes, I would report it.

5 Q. So for the sake of clarity, the  
6 determination in your mind about whether  
7 or not to report an allegation that you  
8 hear is based on the clarity of it, not a  
9 judgment as to whether it's a minor or  
10 more significant type of allegation; is  
11 that correct?

12 A. Again, the way I think about it,  
13 if there's a clear allegation of  
14 discrimination, that's important and would  
15 be brought to the firm.

16 Q. So under that analysis, there are  
17 some allegations that you would not bring  
18 to the firm; is that correct?

19 A. Well, as I said previously, it  
20 would be where it was unclear what exactly  
21 was being claimed or alleged.

22 Q. How does the policy in place at  
23 Davis Polk instruct partners to think  
24 about that type of scenario? How does the  
25

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1 associates.

2 Q. In your role as the head of the  
3 M&A group, did you have input or were you  
4 entitled to have input in the staffing of  
5 associates on different assignments?

6 A. Any partner can have input to the  
7 staffing partners. There's dialogues all  
8 the time. When new deals come in you talk  
9 to the staffing partners and you give them  
10 input as to your needs and who is  
11 available.

12 MR. JEFFRIES: I'm now going to  
13 turn to tab 3. I'd like to have tab 3  
14 moved into evidence.

15 MR. BIRENBOIM: Mr. Bick, are you  
16 okay, do you need a break?

17 THE WITNESS: I'm still okay,  
18 Bruce.

19 MR. BIRENBOIM: Anyone else need  
20 a break on our team?

21 MR. JEFFRIES: Here's what we'll  
22 do. We'll take a break in a few  
23 minutes. I'm just going to make it  
24 through this next range of questions  
25

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1 but certainly based off of the  
2 comments made by Mr. Birenboim and  
3 yourself, Mr. Bick, we'll take a break  
4 in short order.

5 (Exhibit 3, document Bates  
6 labeled DPW\_SDNY-0001435999, marked  
7 for identification.)

8 BY MR. JEFFRIES:

9 Q. I want you to take a look at the  
10 item that's in front of you right now.  
11 This is a PDF version of an Excel file  
12 that was produced by Davis Polk and this  
13 document's Bates number is  
14 DPW\_SDNY-0001435999. So you might have to  
15 zoom in a little bit to see it, if that's  
16 the case.

17 A. Yes, I could enlarge it a little  
18 bit.

19 VERITEXT CONCIERGE: If you move  
20 the mouse, the controls will come up.  
21 You have control of my computer right  
22 now. I've requested that you have  
23 access. Do you see it?

24 THE WITNESS: I've got the plus.  
25

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Harold's office and ask, but my interaction with staffing partners was generally staffing on my matters.

Q. But I think you would agree that as a matter of practice based off of your position as the head of the group, you had input in -- you had the ability to have input into the staffing assignments --

A. You say as a matter of practice. If I wanted to go in and talk to partners about particular staffing, I could.

Q. And during the period of October 2016 through March 2017, you worked with the firm's M&A partners to staff Mr. Cardwell differently than the firm's white M&A associates, didn't you?

A. I did not.

Q. Did Mr. Cardwell's race in any way contribute to you and the firm's M&A partners staffing Mr. Cardwell differently than the firm's white M&A associates?

A. No, sir, it did not.

Q. From October 2016 through March 2017, you knew that Mr. Cardwell was not

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being staffed on billable matters, didn't you?

MR. BIRENBOIM: Objection to form.

THE WITNESS: I didn't know his staffing or his particular hours until maybe March time frame.

BY MR. JEFFRIES:

Q. And when you say until maybe March time frame, what, if anything, did you learn about the status of his billable hours during March?

A. That he had not had significant billable hours consistent with the document we reviewed previously.

Q. How did that come to your knowledge?

A. Someone brought it to my attention. I can't remember precisely who.

Q. Well, who would have been in a position to bring that particular detail to your attention at that time?

A. Different people.

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Q. How did you react to finding out he billed 14 hours in December?

MR. BIRENBOIM: Objection, form, foundation.

THE WITNESS: My reaction was we needed to try to get him work.

BY MR. JEFFRIES:

Q. How did you react to the fact that there were a series of months after December and up to the period of March 2017 where Mr. Cardwell billed single digits in hours?

A. Well, I think it gets into the issue of his performance and so I understood what had happened and how it -- why it was happening, but I knew it had to be addressed and find him work.

Q. With respect to your statement about understanding what happened and why it happened, what is it that you understood happened that led to his considerably low hours being billed between December and March?

A. He had received a series of poor

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performance reviews, really since he began at the firm. And after the review period ended in 2016, significant issues had been identified and communicated to him and that made it hard to staff him on many transactions based on that performance.

Q. So it's your understanding and your testimony that since Mr. Cardwell began at the firm, he had been receiving a series of performance reviews indicating that he was a poor performer?

A. That he had performance issues that he needed to work on.

Q. What was your understanding of those performance issues that would have contributed to him -- that would have led to him not being staffed while he was an associate in your practice group?

A. My recollection of the key points that were communicated to him in different performance reviews, including one that I discussed with him, would be first that I would think of as sort of time management and process issues which would be

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responsiveness to calls and e-mails from members of the team and clients, to understanding sort of the work needed to be done, making sure he asked all the questions so that he could deliver a better subset of work product when he delivered it and not requiring additional work by either the associates or the partner in charge, just attention to details and carelessness where sometimes work would not be completed with the right conforming changes or other items addressed, and again, general lack of understanding from time to time on work.

So this had been communicated to him and was discussed in the fall and the deal was that he was not keeping up with the people in his immediate class of 2014 from a performance point of view and that made it a bit more challenging for us to staff him on the transactions that were coming up relative to other associates who had availability and time.

Q. And were any of those assessments

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based on -- so your position is that those issues, those so-called issues are why he wasn't staffed from December through March?

A. Yes, it was related to his performance over the last two years.

Q. And how do you know that?

A. Because I read his review files.

Q. How do you know that that is what drove Mr. Wolfe's and Mr. Birnbaum's thinking with respect to them refraining from staffing him between October -- between the period of October 2016 through March of 2017?

MR. BIRENBOIM: Objection to form, mischaracterizes the record, the use of refrain. You can answer.

THE WITNESS: Two things. One, when I started to focus on his inability to get work, I did talk to Harold and Brian and we talked about -- I talked about with each of them the difficulties they were having getting him staffed, but I think we

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agreed it was hard with his performance issues to put him on certain types of transactions. And then two, I had been a staffing partner myself in my younger days when I was first a partner and I had seen similar types of problems where a poor performing associate would be difficult to staff on transactions, so I could understand the problems they were dealing with.

MR. JEFFRIES: So at this time I would like to move in tab 7.

(Exhibit 7, document Bates labeled DPW\_SDNY-000086138, marked for identification.)

BY MR. JEFFRIES:

Q. So at the very bottom of the page, do you see the e-mail --

A. I'm just trying to get the control. I'm going to increase the size because I can't read it. Okay.

Q. I'm going to be drawing your attention to the e-mail from you to

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Mr. Cardwell on August 31, 2017 from -- I'm confusing -- from Mr. Birnbaum to Mr. Cardwell, August 31, 2017 at 5:04.

A. Um-hum.

Q. So do you see that the subject of the e-mail is pitch?

A. Yes.

Q. Okay. And do you see that in that e-mail, Mr. Birnbaum states, "Kaloma, we're pitching for a new client, couple of public company deals, and would like to include you on the team for the pitch. Nothing to do right now, just wanted to give you a heads up. Who knows if we'll get it, but here's hoping. Sounds like it wouldn't start until mid September, FYI."

Do you see that?

A. I see that, yes.

Q. Do you know whether or not -- were you aware of that pitch?

A. I do not recollect this pitch, no.

Q. In your position as the head of the M&A group, would that be something

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Q. Do you recall if you had conversations with Harold Birnbaum about Mr. Cardwell in February?

A. Harold might have been included but I don't remember.

Q. Do you recall whether you had conversations with Brian Wolfe about Mr. Cardwell in February 2018?

A. He might have been included, too, but I don't remember.

Q. Do you recall whether you had any conversations with Daniel Brass about Mr. Cardwell in February of 2018?

A. I do not think so.

Q. What about Len Kreynin?

A. He could have been included but I don't remember.

Q. What is it about the period -- what is it about the period of February 2018 that sparks your recollection that there were conversations about Mr. Cardwell during that specific period of time?

A. Well, in terms of the chronology

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here, roughly two weeks prior to this e-mail chain, I know that Louis Goldberg and Oliver Smith sat down and talked to Kaloma about his performance and was effectively giving him his review for the 2017 time period.

I also remember that one of the questions that Kaloma asked of Oliver and Louis after receiving his review was what are the firm's plans regarding my working at the firm and staffing me on transactions going forward. Louis and Oliver I understand told him that we hadn't decided yet what we were going to do.

And so from that review until a date in February, we were considering what we would do, whether to continue trying to get him work and staff him on transactions or effectively tell him to go look for another job. The conclusion was that he should look for another job, that he wouldn't be staffed on matters going forward, so looking for another job would

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1 Mr. Cardwell?

2 MR. BIRENBOIM: Same caution to  
3 the witness that I gave with respect  
4 to Ms. Crane.

5 THE WITNESS: Yes, I remember a  
6 conversation in 2016 with Renee  
7 regarding Kaloma.

8 BY MR. JEFFRIES:

9 Q. And how many conversations have  
10 you had with Ms. Crane about Mr. Cardwell  
11 overall in regards to this -- withdrawn.

12 How many conversations have you  
13 had with Ms. Crane about Mr. Cardwell  
14 overall?

15 MR. BIRENBOIM: Are we talking  
16 about Ms. DeSantis or Ms. Crane?

17 MR. JEFFRIES: I'm going back to  
18 Ms. Crane right now.

19 MR. BIRENBOIM: Okay.

20 THE WITNESS: Any specific time  
21 period or just everything?

22 BY MR. JEFFRIES:

23 Q. During Mr. Cardwell's employment.

24 A. Well, you know, call it sort of  
25

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1 pre-privileged conversations, I don't  
2 recollect any such conversations with  
3 Sharon Crane regarding Kaloma. After we  
4 have privileged conversations, I cannot  
5 tell you the number of times I met in a  
6 group with Sharon.

7 Q. In addition to meeting in a group  
8 to discuss Kaloma with Sharon Crane, have  
9 there been any e-mails between yourself  
10 and Ms. Crane about Mr. Kaloma Cardwell  
11 before or after counsel became involved?

12 A. Not to my recollection, no.

13 Q. What about with respect to Renee  
14 DeSantis, any e-mails between yourself and  
15 Renee DeSantis about Mr. Cardwell before  
16 or after counsel had become involved?

17 A. I believe there were some e-mails  
18 in 2016 but I couldn't give you a complete  
19 list or breakdown.

20 Q. Now, during Mr. Cardwell's  
21 employment, did you ever hear anything  
22 about Mr. Cardwell and other Black members  
23 meeting with the firm's diversity  
24 committee and associate development  
25



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1  
2 department?

3 A. I have no recollection of that,  
4 no.

5 Q. During Mr. Cardwell's employment,  
6 did you ever speak to Sophia Hudson about  
7 Mr. Cardwell?

8 A. I did.

9 Q. And when was that?

10 A. In 2016.

11 Q. And what was the nature of that  
12 conversation?

13 A. Kaloma had worked with Sophia  
14 during his capital markets rotation and I  
15 talked to her about his performance on  
16 those transactions.

17 Q. What was said about his  
18 performance?

19 A. He had not performed well. My  
20 recollection was that he had worked on  
21 three of Sophia's transactions in capital  
22 markets during his six-month rotation in  
23 capital markets, and she was very  
24 concerned about his performance consistent  
25 with what I described earlier.

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1  
2 Q. At the time that you had these  
3 conversations with Sophia Hudson about  
4 Mr. Cardwell, was he in the capital  
5 markets group or was he in M&A?

6 A. The conversation I had with  
7 Sophia was in June of 2016. I don't  
8 remember exactly what day and at that  
9 time, Kaloma was in the M&A practice  
10 group.

11 Q. How did that conversation come  
12 about, who initiated it?

13 A. I did.

14 Q. What was the reason that you  
15 initiated that conversation with  
16 Ms. Hudson about Mr. Cardwell during that  
17 time period?

18 A. I had an earlier meeting with  
19 Renee, I believe Carolina and Alicia Fabe  
20 where we reviewed a presentation that they  
21 had prepared for me regarding Black  
22 American, African American associates in  
23 the corporate group and we had gone  
24 through how each was doing in terms of a  
25 career development. And there was a slide

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1 prepared for me regarding Kaloma and there  
2 were several issues there, a flag, one of  
3 which was recent performance in capital  
4 markets. I asked questions about that.  
5 One of those three people described the  
6 difficult time that Kaloma had in capital  
7 markets during his rotation, in particular  
8 work that he had done on three of Sophia's  
9 transactions. I was very concerned about  
10 his performance in capital markets and  
11 what I was hearing in terms of the  
12 substance, and so I thought it best for me  
13 to call Sophia directly and hear exactly  
14 her thoughts on the subject.

15 Q. And her thoughts related to I  
16 think you said three different  
17 transactions or three different  
18 assignments he worked on with her?

19 A. That's my recollection.

20 Q. And by virtue of the  
21 conversations on each of those particular  
22 assignments, he had -- how would you  
23 describe it, would you describe it as  
24 underperformed or in some other fashion?  
25

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1 A. Yes, or performed poorly. Again  
2 in terms of process issues, he had not  
3 paid attention to details, had been  
4 careless sometimes, he had not turned in  
5 good work product at deadlines. It was  
6 apparent to the lawyers that worked with  
7 him he had substantive issues  
8 understanding the work product so maybe he  
9 had not asked enough questions. And as a  
10 result, it led to taking a little bit too  
11 long to do the work and not meeting the  
12 deadlines. And so these were general  
13 issues that she had identified on the  
14 three deals. And she also had worked  
15 directly with him so this is both  
16 information she got from associates that  
17 worked with Kaloma as well as her own  
18 personal experience.

19 Q. So based off of her working  
20 directly with Kaloma, she had observed the  
21 issues that you previously indicated;  
22 correct?  
23

24 A. Yes.

25 Q. And that was also information

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A. 9 September 2016, yes.

Q. And this -- in this e-mail, it reads, "If you talk to John today about the other stuff please mention Kaloma. As discussed, he needs to be someone's project as soon as possible, i.e., get work and hours and direct feedback. Given his conversation with Rocio, I don't think it makes sense to wait to implement sometime in January after review season."

So who is John in that particular e-mail? That would be you; correct?

A. I believe she's referring to me, yes.

Q. And the words given his conversation with Rocio, that's a reference to a prior conversation between Rocio Clausen and Mr. Cardwell; correct?

MR. BIRENBOIM: Objection to form.

THE WITNESS: I see what the e-mail says. That seems to be what she's referring to.

///

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BY MR. JEFFRIES:

Q. Are you aware of any conversation between Rocio Clausen and Kaloma Cardwell in September of 2016?

A. Fully based on this e-mail, I have no other recollection.

Q. Is it your testimony you were never informed of Mr. Cardwell having a meeting with Rocio Clausen in September of 2016 aside from this e-mail you're seeing here today?

A. I have no recollection of that meeting or what was discussed.

Q. Well, my question to you, sir, is aside from this e-mail that we're looking at today, did you have any knowledge of a meeting between Rocio Clausen and Mr. Cardwell prior to your testimony today?

MR. BIRENBOIM: Objection, asked and answered. You can answer.

THE WITNESS: If I have no recollection, I have no knowledge.

///

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BY MR. JEFFRIES:

Q. Sorry, what was that?

A. If I was no recollection of the meeting or what was discussed, I have no knowledge. To me it's the same thing.

Q. And so did there come a point in time when you were ever informed in any capacity about the meeting or about a meeting between Rocio Clausen and Kaloma Cardwell in September of 2016?

A. I have no recollection of being briefed about that meeting or the conversation.

Q. What about ever, were you ever informed about any meeting between Rocio Clausen and Kaloma Cardwell?

A. Only as a result of this e-mail.

MR. JEFFRIES: At this point in time, let's go off for a moment.

(Lunch recess taken at 1:26 p.m.)

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A F T E R N O O N S E S S I O N

(Time noted: 2:14 p.m.)

J O H N B I C K, resumed and testified as follows:

MR. JEFFRIES: At this point in time, I would like to move tab 13 into evidence.

(Exhibit 11, document Bates labeled DPW\_SDNY-000141924, marked for identification.)

CONTINUED EXAMINATION

BY MR. JEFFRIES:

Q. Mr. Bick, do you see the item moved into evidence?

A. 8 May 2015, yes.

Q. That item is an e-mail, correct, a series of e-mails?

A. Yes, I was going to read it. I haven't seen this.

Q. Take a moment to look through it. I'm going to be speaking to you about the e-mail from May 8, 2015 at 7:34 a.m.

A. I'll let you know when I'm finished.

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that of the head of corporate, would it be expected for a complaint of racial discrimination or racial exclusion to be brought to the attention of firm management?

A. Sure, if an employee or lawyer went to Sharon and raised a formal complaint of racial discrimination, I'm sure she would bring that to management's attention.

Q. You mentioned this e-mail was brought to your attention after the EEOC complaint was filed; is that correct?

MR. BIRENBOIM: Objection to the form.

THE WITNESS: I've not seen this e-mail before but the subject matter of Kaloma visiting with or talking to Sharon about, let's call it introduction issue, I did hear about in connection with the complaint.

BY MR. JEFFRIES:

Q. And just to be clear, that would have been you hearing about this incident

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referenced in the e-mail in connection with a complaint of racial discrimination that Mr. Cardwell made against the firm; is that correct?

MR. BIRENBOIM: Objection to the form.

THE WITNESS: It occurred -- I learned about it after the complaint was filed.

BY MR. JEFFRIES:

Q. Right. And what was the nature -- what was the nexus between you learning about this complaint and the complaint being filed?

MR. BIRENBOIM: I caution the witness not to disclose any conversations with counsel about any litigation.

THE WITNESS: Again, after the EEOC complaint was filed, this was just one factual item I heard about that there was this conversation. I certainly don't characterize it as a complaint, it was a suggestion by

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by counsel, Mr. Bick, aside from this particular incident that's chronicled in the e-mail, were there other incidents that you learned about relative to Mr. Cardwell at the time that you were discussing the EEOC complaint that Mr. Cardwell made?

A. I believe there were other incidents but I learned about those where counsel was present.

MR. BIRENBOIM: Mr. Bick, to be clear, if you learned something by --

MR. JEFFRIES: Mr. Birenboim, wait a minute. Mr. Birenboim.

MR. BIRENBOIM: I'm trying to help.

MR. JEFFRIES: We're not going to do that. This is neither an objection nor anything appropriate for the record.

MR. BIRENBOIM: I was trying to help you get the information.

MR. JEFFRIES: I don't believe that to be the case. I'll do it

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myself, thank you very much.

BY MR. JEFFRIES:

Q. Mr. Bick, what is the -- what is BAG?

A. It's the Black Affinity Group.

Q. And what are affinity groups?

A. Affinity groups are different groups of lawyers that get organized for various functions such as for Black associates, for Asian associates, for women, parents, mothers, so they can form different groups to meet and discuss common issues relevant to the group and other interests or as well as social functions.

Q. So the BAG group is a Black Affinity Group within Davis Polk; correct?

A. Yes.

Q. Would BAG have existed during 2014 through 2018?

A. I believe so but I'm not a hundred percent sure when it started but I believe it existed.

Q. During Mr. Cardwell's employment,

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1  
2 did you ever hear anything about  
3 Mr. Cardwell and other BAG members meeting  
4 with the firm's diversity committee and  
5 associate development department sometime  
6 in 2015?

7 A. I do not. I have no recollection  
8 of that.

9 Q. To be clear, did you ever hear  
10 about Mr. Cardwell and other BAG members  
11 meeting with the firm's diversity  
12 committee and associate development  
13 department at any time --

14 MR. BIRENBOIM: Objection, asked  
15 and answered.

16 Q. -- during the time he was  
17 employed at the firm?

18 MR. BIRENBOIM: Objection, asked  
19 and answered. You may answer again.

20 THE WITNESS: I learned about it  
21 after the complaint was filed.

22 BY MR. JEFFRIES:

23 Q. Did you learn about -- what did  
24 you learn about the meeting?

25 MR. BIRENBOIM: Objection.

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1  
2 Mr. Bick, to the extent the question  
3 calls for the disclosure of  
4 information you learned from counsel,  
5 that is privileged and you should not  
6 disclose it. To the extent you heard  
7 it by reading it in a complaint, you  
8 can disclose that because that's not a  
9 communication from counsel.

10 MR. JEFFRIES: Actually, to the  
11 extent the question is calls for  
12 facts, I'm going to require an answer.  
13 I'm not asking about advice,  
14 Mr. Birenboim. I'm entitled to ask  
15 him about the facts.

16 MR. BIRENBOIM: That is a  
17 preposterous position. If counsel  
18 briefs you on the facts, it is  
19 privileged and I direct you not to  
20 answer.

21 MR. JEFFRIES: The facts --

22 MR. BIRENBOIM: Take that to the  
23 judge, David.

24 MR. JEFFRIES: We will be taking  
25 that to the judge if your position is

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asked and answered. Mr. Bick, if you have information about that outside of what you learned from counsel, you may testify about it.

THE WITNESS: Not to my knowledge.

BY MR. JEFFRIES:

Q. Mr. Bick, do you remember hearing anything about Mr. Cardwell making comments about him experiencing exclusion at Davis Polk due to his race?

A. I remember comments that he made to others.

Q. What's the earliest you remember hearing that?

A. Sometime in 2017.

Q. And what comments did you -- what types of comments did you hear about him making?

A. My general recollection was that he was stating that because he was a Black associate he was being discriminated against and not getting work.

Q. Who did you hear that from?

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A. My recollection is that it followed a conversation Kaloma had with Tom Reid.

Q. And who did you hear about that conversation from?

A. From Tom.

Q. What did you hear about that?

A. I don't know the precise date but it was on or about March of 2017 or shortly thereafter but I don't have a precise date.

Q. You hadn't heard anything about that from Tom prior to 2017?

A. To the best of my recollection, no.

Q. You hadn't heard anything about that from anyone else prior to 2017?

A. To the best of my recollection, no.

Q. Were there any other comments you heard about prior to 2017?

A. Comments about what?

Q. About Mr. Cardwell and his complaints of with respect to not getting



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A. Not with respect to the meeting with Tom but as I was focusing on a work plan, just to get him work down the road, I was going to be talking to some of the M&A partners in connection with that effort.

Q. And which M&A partners did you intend to speak to?

A. Certainly the two staffing partners. I told Brian and Harold, and during the course of the discussions I reached out to a few partners. I don't know that I have a complete list about their willingness to work with Kaloma on some of their matters.

Q. Since Mr. Cardwell had expressed concerns about staffing, did you tell the staffing partners about the meeting with Tom?

A. I have no actual recollection of specifically talking about that with them. My recollection again is talking about a work plan and how to get Kaloma work. That was the discussion I was having with

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them.

Q. Was it possible you communicated information to the staffing partners about the meeting with Tom?

MR. BIRENBOIM: Objection, calls for speculation. You may answer.

THE WITNESS: I just don't know.

BY MR. JEFFRIES:

Q. Do you remember hearing anything about a meeting between Mr. Cardwell, Sheila Adams and Tom Reid over dinner?

A. I learned of that fact in connection with discussions after the March meeting, I believe.

Q. So is it your testimony that in 2016, you had no information or no knowledge about a meeting between Sheila Adams, Kaloma Cardwell and Tom Reid?

A. I have no recollection of discussing that dinner in prior periods.

Q. Did you come to learn that during that dinner with Tom Reid and Sheila Adams, Mr. Cardwell discussed topics related to diversity and inclusion at

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1 A. I do.

2 Q. On or around September or October  
3 in 2016, were you aware that Rocio Clausen  
4 and Carolina Fenner had reached out to  
5 Mr. Cardwell and attempted to staff him on  
6 a credit assignment?  
7

8 A. I was not aware of this staffing  
9 request.

10 Q. Did there come a point in time  
11 where you were ever made aware that Rocio  
12 Clausen and Carolina Fenner had reached  
13 out to Mr. Cardwell and attempted to staff  
14 him on a credit assignment?

15 A. No, this is the first time I'm  
16 seeing it.

17 Q. You never observed any  
18 discussions or you were never informed of  
19 any discussions related to Ms. Clausen's  
20 attempt to staff Mr. Cardwell on a credit  
21 assignment in 2016?

22 A. No, something like this would not  
23 have been brought to my attention.

24 Q. At this point in time in  
25 September of 2016, Ms. Clausen was a

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1 manager in the associate development  
2 department; correct?  
3

4 A. Yes.

5 Q. And what would your role have  
6 been at that point in time, in September  
7 of 2016?

8 A. I was on the management committee  
9 and at that point I was head of the M&A  
10 group.

11 Q. At that point in time,  
12 Mr. Cardwell would have been an associate  
13 in the management -- in the M&A  
14 department; correct?

15 A. Yes.

16 Q. And did you ever learn of an  
17 attempt to staff Mr. Cardwell while he was  
18 one of your associates in the M&A  
19 department in a -- with respect to an  
20 assignment in the credit department?

21 A. Look, this happens with some  
22 frequency where one group needs help and  
23 they don't have sufficient resources, so  
24 certainly within corporate that group will  
25 reach out and ask for help from other

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BICK

Mr. Cardwell made someone's project?

MR. BIRENBOIM: Objection to form.

THE WITNESS: Not to my recollection, no.

BY MR. JEFFRIES:

Q. Within the context of this e-mail, what does it mean or what is being communicated with respect to Kaloma Cardwell being made someone's project?

MR. BIRENBOIM: Objection to form, no foundation. It's not the witness's e-mail.

THE WITNESS: I would be speculating. You would have to ask Sharon.

BY MR. JEFFRIES:

Q. Well, at the time of this e-mail in September or October of 2016, did you believe that Mr. Cardwell was a poor performer?

A. I think he had performance issues as we discussed, so there were significant issues that he had to work on.

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Q. So again, asking specific as to you, did you believe that Mr. Cardwell was a poor performer at the time of this e-mail in September of 2016?

A. Based on feedback I received from others, looking at his reviews, talking to others, yes, I think he had performance issues which I had communicated to him that he needed to focus on and improve.

Q. You mentioned that that belief was in part formed by conversations with others. Which others, which people are you speaking about that contribute to that assessment?

A. I spoke to Sophia as we discussed earlier and I reviewed review files from a whole bunch of lawyers regarding his performance over the years.

Q. Anyone else?

A. In September, not to my recollection, no.

Q. So the review files you mentioned from other associates, do you know which associates those review files were from?

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denied the ability to see his performance reviews and personnel files?

MR. BIRENBOIM: Asked and answered. You can answer.

THE WITNESS: I was going to say as I've previously answered, our policy was not to allow lawyers to see or have their personnel files, so that was the reason why he didn't get his.

BY MR. JEFFRIES:

Q. Was Mr. Cardwell's request the first time that an associate requested to see his or her performance reviews, to your knowledge?

A. I don't know prior requests.

MR. JEFFRIES: Zach, can we take down Exhibit 10?

BY MR. JEFFRIES:

Q. During Mr. Cardwell's employment, did you ever hear anything about Mr. Cardwell contacting Louis Goldberg about how his experiences at Davis Polk had made him physically ill?

A. The only thing I recollect was

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the event in June where he stated he needed a leave of absence. My recollection was because he felt stress. I don't remember the physically ill part but I do remember him requesting a leave of absence based on what stress he had.

Q. And is it your recollection that Mr. Cardwell asked for the leave of absence?

A. That is my understanding, yes.

Q. And why do you have that belief?

MR. BIRENBOIM: Objection to form.

THE WITNESS: In connection with preparation. I read e-mails at the time.

BY MR. JEFFRIES:

Q. With respect to the e-mails that you read in connection with that development, who were those e-mails from?

A. I don't remember the person. It was someone in HR because he had been sort of nonresponsive to Phillip Mills in connection with an M&A transaction that he

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requested the leave of absence; correct?

A. I thought he did. That's my recollection.

Q. Well --

A. Because he responded that he wasn't able to respond to Phillip because of these stress issues.

Q. What would your response be if I told you that Mr. Cardwell was -- if I told you that the leave of absence was something that was put to Mr. Cardwell by firm management as opposed to a leave of absence that he himself had requested?

MR. BIRENBOIM: Objection to form.

THE WITNESS: I was on the management committee. I have no recollection of that. Maybe someone discussed it with him but not to my knowledge.

BY MR. JEFFRIES:

Q. With respect to the meeting -- actually withdrawn.

Have you yourself seen any

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documents indicating Mr. Cardwell's request for a leave of absence?

A. I remember seeing one e-mail where he was reporting in and saying that he was unable to respond because something to the effect that he was having a difficult time.

Q. When did you first become aware that Mr. Cardwell had filed a complaint with the EEOC and with NYS DHR?

A. I believe it was around the August 2017 time frame.

Q. And to the best of your understanding, why did Mr. Cardwell file a complaint with EEOC?

MR. BIRENBOIM: Objection to form, no foundation. This witness doesn't know what Mr. Cardwell is thinking but you can answer.

MR. JEFFRIES: The witness testified as having reviewed the complaints. I'm asking him to answer based off that.

THE WITNESS: He was alleging

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happening?

A. People have gotten negative reviews in the sense that they have to work on specific areas and remain employed, so yes.

Q. Are you aware of associates remaining employed at the firm despite receiving behind ratings in performance reviews in a prior review period?

MR. BIRENBOIM: Objection to form.

THE WITNESS: Again, I don't have any details.

BY MR. JEFFRIES:

Q. Are there any nonperformance-based reviews -- excuse me, are there any nonperformance-based reasons that can contribute to an associate being rated behind other associates in their class?

A. Not to my knowledge. It's all based on performance relative to other members in their class.

Q. Who made the decision to give

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Mr. Cardwell a midyear review in June of 2016?

A. He didn't get a midyear review.

Q. So your testimony is that Mr. Cardwell did not receive a midyear review in 2016?

A. I view it as an interim review. In the fall of 2015 he was not told he was going to be given a midyear review, which is I think is a term of art, that says in connection with your annual review, here are the performance issues we want you to work on and we're going to touch base six months later in a midyear review around May or June.

The interim review I gave to Kaloma was based on the information I got in my meeting with associate development in June and it caused me great concern. I did talk to Sophia, I asked for review forms to be filled by people who had worked with him recently. And then based on all of that, I thought it was important to sit down and give him that input. I

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just make sure I'm not missing anything.  
Okay. I want to read it.

Q. Well, in this it describes the message that Mr. Cardwell is to receive for the 2016 annual review. And what is that message? Actually it says, who are the trickier messages on your list and it says Kaloma is one. And that's an e-mail from you; correct?

A. Yes.

Q. And then it further states -- what does that mean that Kaloma is one of the trickier reviews?

A. The trickier messages is my sort of a shorthand for messages that we give to certain associates who have performance issues, and are we going to tell them that they should start looking for a new job, are not working out. Or do we say here are the issues you need to work on and come back for a midyear review a formal midyear review in June of the following year or is it some variation.

So as we go through that

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high-level review with all of the associates, we will identify one, two or three to get these more difficult messages and so at the end of the review process, we cycle back and discuss these people who have the more difficult messages, you know. I use shorthand and say trickier but it's the more difficult messages at the end of the review process.

Q. And what did you mean when you used the term trickier messages here in this?

A. Again, what I just said, it's a more difficult message touching on whether they should be looking for a new job, whether we're going to give them a midyear review because sometimes we'll say look, we need to see really significant improvement or else you're going to have to look for a new job. Or we just say look, we're going to do a midyear review, we need to see improvement on these issues and then we'll discuss it at that time. So there's all these different variations

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requested the leave of absence; correct?

A. I thought he did. That's my recollection.

Q. Well --

A. Because he responded that he wasn't able to respond to Phillip because of these stress issues.

Q. What would your response be if I told you that Mr. Cardwell was -- if I told you that the leave of absence was something that was put to Mr. Cardwell by firm management as opposed to a leave of absence that he himself had requested?

MR. BIRENBOIM: Objection to form.

THE WITNESS: I was on the management committee. I have no recollection of that. Maybe someone discussed it with him but not to my knowledge.

BY MR. JEFFRIES:

Q. With respect to the meeting -- actually withdrawn.

Have you yourself seen any

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documents indicating Mr. Cardwell's request for a leave of absence?

A. I remember seeing one e-mail where he was reporting in and saying that he was unable to respond because something to the effect that he was having a difficult time.

Q. When did you first become aware that Mr. Cardwell had filed a complaint with the EEOC and with NYS DHR?

A. I believe it was around the August 2017 time frame.

Q. And to the best of your understanding, why did Mr. Cardwell file a complaint with EEOC?

MR. BIRENBOIM: Objection to form, no foundation. This witness doesn't know what Mr. Cardwell is thinking but you can answer.

MR. JEFFRIES: The witness testified as having reviewed the complaints. I'm asking him to answer based off that.

THE WITNESS: He was alleging



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respect to the conclusions related to the weighing of certain reviews over others?

A. I don't understand the question. It's not specific.

Q. What input, if any, would you have had with respect to the arguments related to weighing certain performance reviews over others within the NYS DHR submission?

MR. BIRENBOIM: Objection, this is coming very close to asking for Mr. Bick's conversations with counsel so I'm going to direct him not to disclose conversations with counsel. If you can answer otherwise, you can try.

THE WITNESS: All of this could have been discussions with counsel so as directed by counsel, I can't answer.

BY MR. JEFFRIES:

Q. So in the scenario in which Mr. Cardwell got five reviews, for example -- so actually in Mr. Cardwell's tenure,

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in his first rotation, if he got five reviews, who would make the decision as to characterize which reviews would be weighed more than others in the summary review process?

A. Again, the process that you're describing is not how I see a review process. Just again at a high level in an annual review, there will be a reviewing partner assigned to give the associate the review. That reviewing partner will look at the written reviews submitted by lawyers who have worked for in this case Kaloma.

And that review then is discussed at a practice group meeting, in this case let's say M&A, and other M&A partners are encouraged to participate and attend that meeting. Not everyone does, they have work clients or client conflicts but most do attend those meetings. So the particular associate with the reviewing partner leading the discussion is discussed.

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describe Mr. Cardwell as a poor performer?

A. To my knowledge, no one used that phrase, poor performer, in the context of the review.

Q. And what about with respect to 2016?

A. In 2016, again the review coming out of capital markets and the three matters he worked on in capital markets could be summarized as a poor performer but that word wasn't used. Again the same words you see in this paragraph, responsiveness to the team, to the clients, care and attention to details, asking questions at the beginning so he fully understood what the assignment was, because it would appear that he didn't fully understand the assignment and that led to one missing deadlines, and that the work product wasn't always very good so it would take time and effort for the supervising senior lawyers to redo the work, these things were flagged, not always fall together but lawyers were

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seeing this from time to time.

Q. And is it your testimony that these things were flagged in reviews that you would have -- is it your testimony these things were flagged with respect to reviews in 2016?

A. Yes, based on -- certainly in 2016. I know Sophia sat him down and discussed all of these things in detail so that's very important realtime feedback. And then I sat down and spoke to him in June of 2016 and talked about the need to focus on things that I thought were correctable, if he worked at it, which is responsiveness, that's within his control, paying attention to details and care, that's just rereading documents and making sure that he made all the changes that were necessary, and then making sure you understood the assignment going in so that if you have any questions, go back and ask because if you wait too long, it leads to him taking too much time and not meeting deadlines. So again you can sort of

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Q. What were Mr. Cardwell's job responsibilities as an associate?

A. As a first year, he would do the introductory basic work for corporate transactions. That could range from helping senior lawyers get a transaction to signing, it can help with closing documents, a lot of due diligence review, both on the buy side and sell side for various transactions, and just learning the basic blocking and tackling of the corporate transactions that you're working on.

Q. Did Mr. Cardwell's job responsibilities ever change as an associate?

A. Not significantly because the performance issues that we've been talking about held him back from taking on increasing senior roles and senior responsibilities over the time period that we've talked about.

Q. You indicated not significantly, but did they change in any respect as he

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continued in his time as an associate at Davis Polk?

A. Yes, he was given more advanced assignments to work on that he wouldn't have gotten as a first-year associate, so there was some evolution in terms of the work that he was being exposed to.

Q. How long did Mr. Cardwell remain as an associate at Davis Polk?

A. During the four-year period.

Q. Did Mr. Cardwell's position change at any point during his employment?

A. Change in what way?

Q. Was he ever promoted from the position of associate or demoted in any way?

A. No, the only change I can think of would be that he was told in February of 2018 that he should look for a new job and that he wouldn't be actively staffed on corporate transactions in the M&A group. So he was still an associate, still getting paid but he's no longer working on transactions and his job is to

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look for a job.

Q. How did Mr. Cardwell perform as an associate?

A. Well, again, we flagged the issues. His critical issues were responsiveness, responding to e-mails, both from team members in Davis Polk and being reachable and not responding to clients and other third parties. Lack of care or attention to details during the work that he was doing. Not fully understanding the assignment which led to taking longer than would be expected for the particular assignment and thus not meeting deadlines, and then not understanding the transaction in full, not asking sufficient questions to inform himself that led to sometimes poor work product that needed to be redone by senior people supervising him. So those were issues that sort of were there from the get-go and continued throughout his tenure with Davis Polk.

Q. Did you conduct performance

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evaluations of Mr. Cardwell personally?

A. I gave him -- I sat down with him and did an interim review in June of 2016.

Q. How did you evaluate Mr. Cardwell's performance?

A. Exactly the way we discussed. I said I reviewed review files from the various lawyers, I've spoken to Sophia and going forward to succeed at Davis Polk, there was some key things he should focus on and work on, again responsiveness to other lawyers here and third parties, paying careful attention to details, meeting deadlines and improve the work product.

And I emphasized with him when he spoke with him, I thought these were addressable by him, they were within his control and I think if he focused on it and worked at it, I was confident he could address issues like responsiveness and paying attention to details. Those are all things in my mind that are within control. But I was trying to caution him

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and have him focus because if those things don't get fixed, that's sort of the core of our service to clients, if you're not responsive and you're not careful, you're just not going to succeed in a firm like ours.

MR. JEFFRIES: I'm going off just for one moment.

(Discussion off the record.)

BY MR. JEFFRIES:

Q. So what was the timing of those performance evaluations or of your performance evaluation with respect to Mr. Cardwell's complaints?

MR. BIRENBOIM: Objection to form, no foundation for complaints.

THE WITNESS: I'm not sure I understand the question. What was the timing of?

BY MR. JEFFRIES:

Q. What was the timing of the evaluation that you gave Mr. Cardwell in relation to the complaints that were made?

MR. BIRENBOIM: Objection.

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BY MR. JEFFRIES:

Q. What was the time frame?

A. Again, you mean his EEOC complaint and the New York State complaint, is that what you're talking about?

Q. Well, I'm talking about the complaints that you mentioned that you had become aware of throughout the course of the litigation. You mentioned becoming aware of a complaint made to Sharon Crane, to the BAG group, to Mr. Goldberg, so --

A. These individual complaints, not the legal complaints, is that correct, is my understanding correct? Those were all --

MR. BIRENBOIM: Wait, objection to the form of the question. You may answer.

THE WITNESS: My knowledge of those complaints all came after I gave my interim review to Kaloma.

BY MR. JEFFRIES:

Q. And again, how did your knowledge

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1  
2 help improve his performance as an  
3 associate, are you aware of whether or not  
4 Mr. Cardwell was ever placed on anything  
5 like that during his employment?

6 A. Well, are you referring to 2017  
7 and the work plan we came up with or are  
8 you referring to this time period, call it  
9 2014 through end of 2016?

10 Q. I'm asking you globally, 2014  
11 through 2018. If there's more than one,  
12 then please indicate it, but if there's  
13 only one that comes to mind, then I'd ask  
14 that you indicate that as well. So with  
15 respect to performance improvement plans,  
16 performance improvement efforts, what are  
17 you aware of with respect to Mr. Cardwell  
18 during his employment?

19 A. Well, in the period from 2014  
20 through 2016, he got specific feedback  
21 from Bill Chudd, Sophia, myself and Len  
22 Kreynin in the 2016 review period to work  
23 on these performance issues, so I don't  
24 characterize that as a remediation plan,  
25 but he was given specific issues to focus

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1  
2 on where the performance needed  
3 improvement. Then after he had met with  
4 Tom Reid in March and took the time off in  
5 April, when he came back we had worked out  
6 a specific work plan with him going  
7 forward which was designed to give him  
8 realtime feedback, hands-on training and  
9 teaching from partners who were really  
10 good teachers, that was their reputation,  
11 in order to focus on all of these issues  
12 and try to catch him up and make  
13 improvements in all these areas.

14 Q. And so would you say that the one  
15 following March 29th of 2017, would you  
16 say that was the first work plan?

17 A. That was the specific work plan  
18 we developed for Kaloma to address his  
19 performance issues and get him staffed on  
20 corporate transactions so he would be in a  
21 position to do the work and hopefully  
22 improve on these performance issues.

23 Q. So what did Mr. Cardwell need to  
24 do to get off of the work plan?

25 MR. BIRENBOIM: Objection to

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form.

THE WITNESS: He needed to make improvements in these key areas, he needed to do good work, make sure he understood the assignment, meet deadlines, be more careful, pay attention to detail and certainly be responsive to e-mails and contact from not only Davis Polk team but clients and other third parties.

BY MR. JEFFRIES:

Q. Was this communicated to him?

A. Yes.

Q. How so?

A. When he came back from his time off in April, I sat down with him and described what we would be working with him on.

Q. Was anyone else a part of that meeting?

A. No, it was just Kaloma and myself.

Q. And so what specifically did you tell him he had to do in that meeting

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between the two of you?

A. I said that we would be giving him an assignment with a partner in the M&A group and he would work on that assignment with that M&A partner until it was completed. That M&A partner would be spending time with him to make sure he understood the transaction. The partner would be paying attention to the issues that we had identified for improvement such as responsiveness, attention to details, meeting deadlines and doing good work.

Once that assignment with the partner was completed, we would find another assignment and move on to the next one and continue to work on those issues, and that my goal was to find partners who were good hands-on teachers where he could learn a lot from them and they were willing to help him directly.

Q. So it's your testimony that you told him it was a plan designed to improve his performance; is that correct?

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certainly had opinions about why he wasn't getting work and those opinions were expressed in the meeting with Tom Reid and Len Kreynin; right?

MR. BIRENBOIM: Objection to form.

THE WITNESS: If you could be more clear about what his objections were based on, I could be maybe more responsive.

BY MR. JEFFRIES:

Q. As we discussed earlier, his comments were related to not receiving work based off of him being a Black associate and that was communicated, which we discussed earlier, to Tom Reid and Len Kreynin in the March meeting; right?

A. That's when I learned, yes, I believe I was told that Kaloma had said that his lack of work was based on racial discrimination.

Q. Was Mr. Cardwell ever suspended from work at Davis Polk?

A. Not to my knowledge.

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Q. Was Mr. Cardwell ever disciplined by Davis Polk?

A. Not to my knowledge, no.

Q. Was Mr. Cardwell ever warned that if he didn't improve his performance that the firm would terminate him?

A. I'm just thinking. I don't think we learned of a termination event in the performance reviews that we gave him until Louis and Oliver spoke with him.

Q. Did you attend the meetings where partners discussed associates' reviews, review meetings, so to speak?

A. Are you referring to the annual review meetings that we conduct each year?

Q. Yes.

A. Yes. So for the M&A group, I would attend performance review meetings typically held in -- call it October/November.

Q. Did you attend such a meeting in 2016?

A. Yes.

Q. Did you attend such a meeting in



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2017?

A. Yes.

Q. Did you attend such a meeting in 2018?

A. Yes. It's a series of meetings so I believe I attended the great majority of them. I may have missed one or two but I don't know each one.

Q. So in keeping with this line of questioning, did you attend the meeting in 2015?

A. Yes.

Q. And were any non-partners physically present at any of those meetings?

A. Members of associate development will participate in those meetings. I couldn't tell you which one was present at which meeting but one of them at least would be attending.

Q. So turning to the meeting in 2015, do you recall if Sharon Crane, Renee DeSantis -- do you recall Sharon Crane attended the meeting in 2015?

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A. Again, I don't remember at each meeting who attended.

Q. Would Sharon Crane be the type of non-partner personnel that would attend the annual review meetings?

A. She could but she wasn't necessarily frequent the way someone from associate development would always -- would always be there at each review meeting.

Q. So in keeping with the fact that someone from associate development would be present at each meeting, do you recall if Renee DeSantis was at the annual review meeting in 2015, 2016, 2017 or 2018?

A. Apart from myself, I don't remember individual attendance by anyone from associate development, other than again generally there's someone there at each meeting, but who it is, I don't know or remember.

Q. Aside from attending, I believe you mentioned -- well, was there any participation that members of the

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associate development department would have at these annual review meetings, aside from simply attending?

A. They may ask factual questions directed to them.

Q. Factual questions about what?

A. Certain -- what assignments he might have worked on, if they were young first year, second year or they are working on the staffing, a question might come up whether they were easy to deal with or did they object to staffing, things of that nature.

Q. These would be questions that the associate development department representative would be posing; correct?

A. No, these are questions put to the person from associate development where we needed some more facts regarding the associate.

Q. And with respect to the usage of that information throughout the review meetings or review discussion meetings, would a consensus feedback message be

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created?

MR. BIRENBOIM: Objection to form.

THE WITNESS: That was the goal. There would be again a discussion led by the reviewing partner which we talked about before. A particular associate, younger associates, first or second years typically would not have that discussion. That review could be prepared just by the reviewing partner working in tandem with associate development.

But more senior people, certainly third year and above, there would be a discussion about that individual by a lead reviewing partner. They would let us know who had given reviews and then summarize their synopsis of all those reviews. Sometimes they would read quotes from the reviews. Sometimes they would ask the reviewing partner, the partner who had given that specific review to add further

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comment or background if he or she desired.

And then following that lead discussion by the reviewing partner, there would be a general discussion where everyone could ask questions or give comments. And coming out of that would be what is the consensus message that we wanted to deliver to that particular associate based on all of those reviews.

BY MR. JEFFRIES:

Q. Could people who didn't work with the associate contribute to the final review message?

A. They could, but typically it would be those who had the most experience with the associate, but everyone could ask a question or make a comment.

Q. Did the partners who discussed the reviews use a written set of policies as a guide to inform how they should discuss associates' reviews?

A. I'm not aware of any specific

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policy as to how they should conduct the discussion or ask questions.

Q. Did they use a written rubric or scorecard of some sort?

A. No, not to my knowledge.

Q. Does Davis Polk have any material written policies that Davis Polk partners were required to follow where they are discussing individual reviews for the purpose of creating a consensus message?

A. No, no written guidelines saying how you have to develop the consensus message to my knowledge, no.

Q. So if the firm didn't use any written policies or rubrics, how did the Davis Polk partners, how would partners know which individual reviews were to be given more weight than others, if there was nothing, no written policy, no rubric?

A. Well --

MR. BIRENBOIM: Objection to form. You may answer.

THE WITNESS: There's no written rules regarding weighting because in a

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way it doesn't necessarily come into play in any formulaic way. So, for example, if an associate got eight reviews, six of them were very good, two of them were bad, some people had some bad experiences, we would discuss that associate and try to come to a consensus view. Obviously in the case where there's let's say seven real good reviews, one person has a bad review, I think usually that would be understood to be sort of an outlier and probably discounted.

If on the other hand there was eight reviews, four of them good, four of them bad, there would be more concern that there was a pattern of poor performance, so we would come up with what would be the constructive feedback that we would give to the associate about the key issues that we identified what they should be working on.

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BY MR. JEFFRIES:

Q. Based on what you know about Mr. Cardwell's reviews, what processes did the M&A partners follow in terms of deciding which reviews should be given more weight than others?

A. Again, based on my just answered question he was discussed, it depends on what time period. If you want to look at 2016, Len Kreynin was the reviewing partner leading the discussion. He had gathered up the written reviews and summarized them for the group and there was a discussion by the group. Again, there's no formulaic weighting process. Again, it's just a discussion here of the issues Kaloma has and what message do we want to give to him.

Q. Did Len Kreynin decide that Mr. Cardwell should receive a midyear review?

A. No, that's part of the consensus review process, whether the associate, based on the performance of feedback they

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are going to get and the particular constructive feedback or goals we want to see them working on, the group on a consensus basis decides whether that should be a midyear review. In 2016, the consensus was that given these issues regarding responsiveness, attention to details, understanding assignments, meeting deadlines and in some cases poor work product, the consensus was that he should be given a midyear review in 2017.

Q. During Mr. Cardwell's employment, did you see any documents that stated that Mr. Cardwell knew how he was performing?

A. Did I see any documents that he knew? Other than that he received the reviews with these people, with these goals, so I would have thought that based on the reviews that Bill Chudd gave to him, that Sophia gave to him on capital markets, that I did on the interim basis and that Len gave him, in my mind he should have had a pretty good idea of the issues that he needed to work on to be

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successful at Davis Polk.

Q. Is Mr. Cardwell still employed at Davis Polk?

A. He is not.

Q. And when was Mr. Cardwell terminated?

A. I believe it was August of 2018.

Q. What's the earliest moment that you thought Mr. Cardwell might be terminated for poor performance?

MR. BIRENBOIM: Objection to form. You may answer if you recall.

THE WITNESS: In fall of 2016 and ultimately in obviously January/February time frame of 2017.

BY MR. JEFFRIES:

Q. And why did you have that --

A. I'm sorry, the fall of 2017 and January/February 2018.

Q. So not the fall of 2016; correct?

A. No, not before.

Q. And when did you first hear that someone from the firm was interested in Mr. Cardwell working somewhere other than

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Davis Polk?

MR. BIRENBOIM: Objection to form, no foundation.

THE WITNESS: When you say someone, we were making that decision collectively and it was discussed in the fall of 2017, and then ultimately the message was agreed that in February in response to Kaloma understandably wanting to know what the program would be in terms of working on transactions when he got the review in January of 2018, ultimately we came back to him and said he needed to look for a new job. So that's when he was told he had to leave the firm.

BY MR. JEFFRIES:

Q. When was that decision -- when were those discussions taking place, the ones that led to the decision to terminate Mr. Cardwell?

A. That would be in the January/February time frame of 2018.

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Q. And ultimately who made the decision to terminate Mr. Cardwell?

A. I think it was a group discussion. It would be certainly management committee because of the EEOC complaint and focusing on impact of termination on those proceedings, and then also getting consensus from a handful of people, staffing partners, Louis Goldberg, Oliver, who had given him the reviews, everyone who had input, and ultimately, the consensus was that he should go get another job, that staffing him was becoming untenable.

Q. With respect to specific individuals, I heard you mention the management committee, Goldberg and staffing partners. So would that be Harold Birnbaum; correct?

A. Yes, Harold and I believe Brian Wolfe.

Q. And with respect to management committee, would that conversation or would that input related to terminating

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Mr. Cardwell have involved input from  
Mr. Tom Reid?

A. Yes, it would have been Tom Reid  
and Jim Rouhandeh.

Q. And what about any other M&A  
partners, would there have been any other  
M&A partners who he worked with that gave  
input as to the decision to terminate  
Mr. Cardwell?

A. Not to my recollection.

Q. How was the termination decision  
communicated to Mr. Cardwell?

A. I believe Louis Goldberg, Oliver  
Smith followed up on the official  
performance review they gave him in  
January with a follow-on message in  
February.

Q. Have any other employees been  
terminated for the same reason that  
Mr. Cardwell was terminated?

MR. BIRENBOIM: Ever?

BY MR. JEFFRIES:

Q. In your experience, Mr. Bick.

A. You mean based on performance

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reviews and performing poorly?

Q. Yes.

A. Yes, we have talked to other  
lawyers and lawyers do get told by us that  
based on performance, you need to look for  
another job.

Q. Between 2014 and 2018, were any  
other associates terminated for the same  
reason as Mr. Cardwell, specifically  
performance as you mentioned?

A. I don't have a specific list. I  
couldn't give you names. I don't  
recollect.

Q. Who would have that information,  
who would have that list of other  
associates that would have been terminated  
during the years of 2014 and 2018 for the  
same reason as Mr. Cardwell?

A. You'd have to look at their  
written reviews where that message would  
be delivered.

Q. So is that to say there's not an  
individual that would have knowledge  
related to those occurrences by virtue of

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happening?

A. People have gotten negative reviews in the sense that they have to work on specific areas and remain employed, so yes.

Q. Are you aware of associates remaining employed at the firm despite receiving behind ratings in performance reviews in a prior review period?

MR. BIRENBOIM: Objection to form.

THE WITNESS: Again, I don't have any details.

BY MR. JEFFRIES:

Q. Are there any nonperformance-based reviews -- excuse me, are there any nonperformance-based reasons that can contribute to an associate being rated behind other associates in their class?

A. Not to my knowledge. It's all based on performance relative to other members in their class.

Q. Who made the decision to give

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Mr. Cardwell a midyear review in June of 2016?

A. He didn't get a midyear review.

Q. So your testimony is that Mr. Cardwell did not receive a midyear review in 2016?

A. I view it as an interim review. In the fall of 2015 he was not told he was going to be given a midyear review, which is I think is a term of art, that says in connection with your annual review, here are the performance issues we want you to work on and we're going to touch base six months later in a midyear review around May or June.

The interim review I gave to Kaloma was based on the information I got in my meeting with associate development in June and it caused me great concern. I did talk to Sophia, I asked for review forms to be filled by people who had worked with him recently. And then based on all of that, I thought it was important to sit down and give him that input. I



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1 know that he wanted realtime feedback and  
2 I was concerned if I didn't give him that  
3 feedback, the next time we would actually  
4 sit down and talk to him could be in  
5 November or December of 2016, and these  
6 were serious issues and I wanted him to be  
7 aware of them and be focused on them and  
8 not simply ignore what Sophia might have  
9 said so I felt it was important not to  
10 lose time and give him this interim  
11 review, but I think it's wrong to sort of  
12 characterize it as a midyear review.

13 Q. Are you aware of Sophia Hudson  
14 giving Mr. Cardwell a review?

15 A. Yes, not a formal written review  
16 in the February time frame. She sat down  
17 and spoke to him and gave him very  
18 concrete feedback about her experience  
19 working with him and the issues he needed  
20 to focus on.

21 Q. Are you aware of her giving him a  
22 review in 2016 at any time?

23 A. Yes, we just talked about that.  
24 At the end of his capital markets  
25

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1 rotation, she sat down and gave him  
2 feedback based on her work experience with  
3 him.  
4

5 Q. Did you speak to Ms. Hudson  
6 before she completed that review?

7 A. Yes, I think she put in a written  
8 review in June at some point but I had  
9 talked to her. I don't know the precise  
10 time frame, whether it was just before or  
11 just after her review, but she put in the  
12 review in June in connection with my  
13 request for all lawyers who worked with  
14 him in 2016 to fill in some forms so I  
15 could have some current data to show him.

16 Because the last thing I wanted  
17 to do is sit down with him and just talk  
18 about Sophia's issues and what he needed  
19 to work on, which was a concern enough for  
20 me and certainly prompted the whole review  
21 process, but also I wanted to get more  
22 current data from people who were  
23 currently working with him, so if he asked  
24 what do other people think in M&A who are  
25 working with me, I didn't want to say I

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don't know. I wanted to make sure I had that information to share with him.

And some of the information was good. Some of the M&A lawyers who worked with him thought he had done a good job, in particular Laura Turano who had had a negative experience with him in 2015, and had worked with him in 2016 and had a positive experience and seen an improvement, so that was reassuring.

Q. So you did speak with Sophia Hudson prior to her completing her written review; is that correct?

MR. BIRENBOIM: Objection to form, mischaracterizes what he just said. You may answer.

THE WITNESS: I did speak to her in the June time frame. I don't remember if she had put in her written review before I spoke with her or not. I had gotten the substance of it from associate development and what they had heard and again, I had a direct conversation with Sophia.

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BY MR. JEFFRIES:

Q. Who were Mr. Cardwell's similarly situated comparators?

MR. BIRENBOIM: Objection to form. If you understand how to answer that, you can answer it.

THE WITNESS: I couldn't give you the list off the top of my head.

BY MR. JEFFRIES:

Q. Well, what traits would you use to discern who Mr. Cardwell's comparatively -- what would make them comparators?

MR. BIRENBOIM: Objection to form, foundation. You can answer.

THE WITNESS: If you're just comparing him within the M&A group, I would look at other members of the class of 2014 in the group as the closest comparator because they develop in roughly at the firm for the same period time. I wouldn't compare him in the class of 2014 to someone who was the class of 2013, you know,

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happening?

A. People have gotten negative reviews in the sense that they have to work on specific areas and remain employed, so yes.

Q. Are you aware of associates remaining employed at the firm despite receiving behind ratings in performance reviews in a prior review period?

MR. BIRENBOIM: Objection to form.

THE WITNESS: Again, I don't have any details.

BY MR. JEFFRIES:

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A. Not to my knowledge. It's all based on performance relative to other members in their class.

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3 feedback, the next time we would actually  
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5 November or December of 2016, and these  
6 were serious issues and I wanted him to be  
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20 to focus on.

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22 review in 2016 at any time?

23 A. Yes, we just talked about that.  
24 At the end of his capital markets  
25

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22 current data from people who were  
23 currently working with him, so if he asked  
24 what do other people think in M&A who are  
25 working with me, I didn't want to say I

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1 decision to terminate him because he's now  
2 a rising fourth-year associate.

3 In our opinion, he wasn't  
4 operating as a fourth-year associate. The  
5 work that he was capable of doing would be  
6 the work of a first or second year  
7 associate and we didn't think that was  
8 tenable to staff him on those matters,  
9 both from a client point of view and also  
10 it would be very hard where he might be  
11 working with another lawyer who was  
12 technically junior to him, but was working  
13 at a more senior level than he was. It  
14 just was going to be very difficult for  
15 him and for us.

16 MR. JEFFRIES: Let's turn to tab  
17 14 at this point in time. You can  
18 take this down, Zach.

19 (Exhibit 17, document Bates  
20 labeled DPW\_SDNY-000140827, marked for  
21 identification.)

22 MR. JEFFRIES: Can you enlarge  
23 this a bit?

24 MR. BIRENBOIM: Zach, can you  
25

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1 tell us how much time we have?

2 VERITEXT CONCIERGE: We are at  
3 six hours and 48 minutes.

4 MR. BIRENBOIM: 12 minutes, okay.

5 BY MR. JEFFRIES:

6 Q. So I want you to look at the  
7 items, specifically the e-mail from Renee  
8 DeSantis, June 2016 at 7:30 p.m. Take a  
9 look at that item, Mr. Bick. It's June  
10 13, 2016.

11 A. I'm just going to read from the  
12 bottom up e-mails.

13 (Witness perusing document.)

14 Yes, I read it now, um-hum.

15 Q. And that's an e-mail from  
16 Carolina Fenner -- actually excuse me,  
17 from Alicia Fabe to Renee DeSantis and  
18 Carolina Fenner; correct?

19 A. Yes.

20 Q. And it reads, yes, agreed,  
21 especially since he wasn't given -- I've  
22 inverted this. We're going to need to  
23 start at the bottom of the document. So  
24 if you just scroll down, Mr. Bick, June  
25

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again, I think it's easily addressed to take away that concern. And again, I think based on the issues, the performance issues and giving him time to focus and correct these, this was something we had to do, we should do and we did do.

BY MR. JEFFRIES:

Q. Well, what did you communicate to them? Did you communicate to them that you wanted Mr. Cardwell to be put into a midyear review cycle?

A. No, I said I wanted to talk to him particularly about his experience at capital markets because I saw that as a step back based on after his first two rotations. I was concerned about that particularly after talking to Sophia because she had very credible and concrete examples of what had gone wrong on his work in capital markets.

But at the same time I didn't want to just go in and talk about Sophia. Again, I wanted to have feedback from the

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M&A lawyers who were working with him because based on his prior discussions asking for realtime feedback, I'm sure he'd say what do people think about and I would be remiss not to have an answer when he asked that question if I said I didn't get any feedback, I don't know. That would have been a wrong outcome.

MR. JEFFRIES: Turning to tab 20 at this time, I would like to have tab 20 moved into evidence.

(Exhibit 18, document Bates labeled DPW\_SDNY-000097947, marked for identification.)

MR. BIRENBOIM: While we're doing that, you have two minutes left, Mr. Jeffries, so I'm just letting you know.

BY MR. JEFFRIES:

Q. At the top of tab 20, can you see where that says -- where at the top it says the message that Mr. Cardwell is supposed to receive for his 2016 review?

A. This is 17 October 2016. Let me

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just make sure I'm not missing anything.  
Okay. I want to read it.

Q. Well, in this it describes the message that Mr. Cardwell is to receive for the 2016 annual review. And what is that message? Actually it says, who are the trickier messages on your list and it says Kaloma is one. And that's an e-mail from you; correct?

A. Yes.

Q. And then it further states -- what does that mean that Kaloma is one of the trickier reviews?

A. The trickier messages is my sort of a shorthand for messages that we give to certain associates who have performance issues, and are we going to tell them that they should start looking for a new job, are not working out. Or do we say here are the issues you need to work on and come back for a midyear review a formal midyear review in June of the following year or is it some variation.

So as we go through that

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high-level review with all of the associates, we will identify one, two or three to get these more difficult messages and so at the end of the review process, we cycle back and discuss these people who have the more difficult messages, you know. I use shorthand and say trickier but it's the more difficult messages at the end of the review process.

Q. And what did you mean when you used the term trickier messages here in this?

A. Again, what I just said, it's a more difficult message touching on whether they should be looking for a new job, whether we're going to give them a midyear review because sometimes we'll say look, we need to see really significant improvement or else you're going to have to look for a new job. Or we just say look, we're going to do a midyear review, we need to see improvement on these issues and then we'll discuss it at that time. So there's all these different variations

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and that's what the group discusses and we determine what type of message we want to give.

So Kaloma, based on the performance issues that we've been talking about, was on this list of what do we tell him, do we tell him he's got to look for a new job, do we tell him we're going to give him a midyear review and to again go over the key performance issues that he needs to focus on to improve.

(Continued on next page.)

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MR. BIRENBOIM: Zach, can we have the time, please?

MR. JEFFRIES: I have no further questions.

MR. BIRENBOIM: Okay, I have no questions. Thank you, Mr. Bick.

(Time noted: 5:46 p.m.)

\_\_\_\_\_  
JOHN BICK

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public